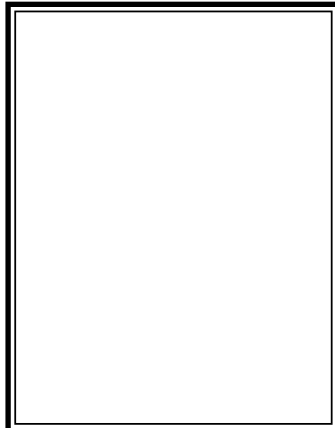


FRANZÉN AND SALZANO WELCOMES CHRISTOPHER FAGAN

We are pleased to announce that Christopher Fagan has joined the firm as an associate. Christopher is a graduate of Case Western Reserve University School of Law, where he received honors for his academic performance. Most recently, Christopher analyzed regulatory and legislative developments as an attorney for CompliSource. Prior to attending law school, he was a Wholesale Auditor with Ford Motor Credit Company. Please join us in welcoming Christopher to the firm.



WHEN IS AN ORIGINATOR AN "EMPLOYEE" FOR RESPA EXEMPTION PURPOSES?

The Illinois Court of Appeals recently considered whether the RESPA exemption for payments to employees applied to the lender's loan originator. The loan originator worked primarily out of a realtor's office, was paid on a commission basis, and his income was reported using a W-2 form. The court ruled against the lender, finding that it was a jury issue as to whether the loan originator was an actual "employee" of the lender for RESPA exemption purposes.

CIRCUITS SPLIT OVER PERMISSIBILITY OF UPCHARGES UNDER RESPA

With the Second Circuit Court of Appeals' recent decision, there is now a split in the Circuits as to whether an upcharge of a third party fee violates RESPA, as HUD has long opined. Contact us if we can assist you in analyzing your business practice in light of these decisions.

★ Announcements ★

Congratulations to Drexel Beck on being named 2004 Volunteer of the Year by the Georgia Association of Mortgage Brokers!

FTC CHARGES TWO MORTGAGE COMPANIES WITH VIOLATING GLB SAFEGUARDS RULE

The FTC has filed an enforcement action against one mortgage company and has entered into a settlement with another, based upon allegations that the companies violated the FTC's Safeguards Rule (implementing provisions of Gramm-Leach-Bliley) by failing to implement sufficient safeguards to protect customer information.

The Safeguards Rule requires mortgage companies to adopt and implement a written information security plan. If you would like assistance with your company's security plan, please contact us.

"TALKING THE TALK"

In **March**, **Terry Franzén** will address the Dallas Area Compliance Association regarding identifying, preventing and resolving mortgage fraud. Also in **March**, she will speak at the Skip Tracing in Georgia seminar regarding legal considerations in skip tracing, and she will speak at the ABA's program "The Irresistible Attraction of State Courts for Consumer Litigation" in Nashville. In **May**, she will address the RPLI at Amelia Island regarding an Update on Truth In Lending and RESPA Developments.

Loretta Salzano will speak at the Subprime Summit in Miami in **March**. In **May**, she will address mortgage fraud at the RPLI and will speak at the Subprime Symposium in Las Vegas.

John Bedard will address the Georgia Collectors Association's Multi-Unit Annual Meeting at Lake Lanier Island in **April**.



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US SUPREME COURT UPHOLDS TILA DAMAGE CAP FOR PERSONAL PROPERTY LOANS

The U.S. Supreme Court has reversed the Fourth Circuit Court of Appeals and has held that the 1995 revision to TILA did not alter the \$100/\$1000 damage cap for TILA violations involving loans secured by personal property.

STATES IN BRIEF

California has repealed the “private attorney general” feature of its law governing unfair and deceptive trade practices. The California Department of Corporations and Department of Real Estate have taken the position that YSP must be included in the points and fees calculation under the California high cost loan law.

Louisiana has eliminated the requirement for a non-owning spouse to sign to waive homestead rights.

The Montgomery County, **Maryland** Council is considering a proposed “anti-predatory lending” ordinance.

The **Massachusetts** Division of Banks has issued temporary emergency regulations providing more guidance as to the scope of the Predatory Home Loan Practices Act.

Missouri has extended the time for filing mortgage satisfactions to 45 calendar days from 15 business days.

Nevada has revised its Mortgage Banker administrative regulations concerning document retention.

New Jersey will now permit first lien mortgages of up to 103% (formerly 100%) of the fair market value of the real estate security for mortgage guaranty insurance purposes.

The **New York** Banking Department has adopted emergency

regulations with amendments concerning mortgage bankers and brokers, including a requirement that each mortgage banker employ a Compliance Officer.

The Summit County, **Ohio** Council has passed a predatory lending ordinance that gives the Office of Consumer Affairs the power to mediate and refer complaints concerning predatory lending. The Ohio Court of Appeals has upheld the Cleveland predatory lending ordinance. The court recognized that its Cleveland holding conflicts with a different District’s Court of Appeal’s decision invalidating the Dayton predatory lending ordinance.

The **South Carolina** law concerning mortgage broker licensing was recently amended to provide for licensure and renewal fees for originators.

Tennessee has adopted new administrative rules setting out the fees for loan originator registration under the Tennessee Residential Lending Brokerage and Servicer Act.

The **Texas** Joint Financial Regulatory Agencies recently adopted new administrative interpretations of the forfeiture and cure provisions under the Texas Constitution.

Utah has issued regulations that affect the licensing of new mortgage officers, the registration of assumed business names, reciprocal licenses, branch offices, status changes, and exemptions from the continuing education requirement for renewals.

The **Wisconsin** Division of Banking has adopted administrative regulations concerning the disclosures for covered loans and determining ability to repay.

Please contact us if we may assist you with these new licensing and other regulatory requirements.

Publisher’s Note:

Points of Interest is published by Franzén and Salzano, P.C. for clients and colleagues in the lending industry and should not be construed as legal advice. The contents are for general information purposes only. You are urged to consult legal counsel concerning any specific situation or legal issue.

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